

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3

4 JANET HILLER,

5 Petitioner,

6 v.

7 WARDEN NEVEN, *et al.*,

8 Respondents.
9

Case No. 2:19-cv-00260-RFB-GWF

ORDER

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11 In this habeas corpus action, on March 16, 2020, the petitioner, Janet Hiller,
12 represented by appointed counsel, filed a second amended habeas petition (ECF No. 24)
13 and several supporting exhibits (ECF Nos. 25, 26, 27, 29).

14 On March 16, 2020, Hiller also filed a motion for leave to file one of her exhibits
15 under seal (ECF No. 28). She requests leave to file under seal her Exhibit 29 (ECF No.
16 29) which consists of her medical records. On March 30, 2020, Respondents filed a notice
17 stating that they do not oppose Hiller's motion to file Exhibit 29 under seal (ECF No. 31).
18 There is a strong presumption in favor of public access to judicial filings and documents.
19 *See Nixon v. Warner Communication, Inc.*, 435 U.S. 589, 597 (1978); *see also Kamakana*
20 *v. City and County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006); *Foltz v. State Farm*
21 *Mut. Auto Ins. Co.*, 331 F.3d 1122, 1134 (9th Cir. 2003). However, the court has inherent
22 power over its own records and files, and access may be denied where the court
23 determines that the documents may be used for "improper purposes." *Nixon*, 435 U.S. at
24 598; *Hagestad v. Tragesser*, 49 F.3d 1430, 1433–34 (9th Cir. 1995); *Kamakana*, 447 F.3d
25 at 1179; *see also* Fed. R. Civ. P. 5.2(d); LR IA 10-5. The documents that Hiller seeks to
26 file under seal contain private medical information. The Court finds that there is good
27 cause for these exhibits to be filed under seal and will grant Hiller's motion.
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1 On March 16, 2020, Hiller also filed a motion for leave to conduct discovery (ECF
2 No. 30), requesting leave of court to conduct discovery regarding the merits of her claims.

3 On March 30, 2020, Respondents filed a motion for extension of time (ECF No.
4 32), requesting until April 2, 2020, to respond to Hiller's motion for leave to conduct
5 discovery. Respondents' counsel stated that the short extension of time was necessary
6 because of difficulties caused by the COVID-19 outbreak. On April 2, 2020, Respondents
7 filed their response to the discovery motion (ECF No. 33), and Petitioner replied on April
8 7, 2020 (ECF No. 34). The Court finds that Respondents' motion for extension of time
9 was made in good faith and not solely for the purpose of delay, and that there is good
10 cause for the extension of time requested. The Court will grant the motion for extension
11 of time and treat Respondents' response to the discovery motion as timely filed.

12 Turning to Petitioner's motion for leave to conduct discovery (ECF No. 30), the
13 Court determines that the motion is not properly presented and is premature at any rate.

14 Rule 6 of the Federal Rules Governing Section 2254 Cases allows a habeas
15 petitioner to conduct discovery pursuant to the Federal Rules of Civil Procedure if the
16 Court grants leave to do so. However, "[a] habeas petitioner ... is not entitled to discovery
17 as a matter of ordinary course." *Bracy v. Gramley*, 520 U.S. 899, 904 (1997). The Court
18 may grant leave for discovery "in the exercise of [its] discretion and for good cause
19 shown." *Id.* Good cause exists "where specific allegations before the court show reason
20 to believe that the petitioner may, if the facts are fully developed, be able to demonstrate
21 that he is ... entitled to relief." *Id.* at 908–09.

22 Hiller requests leave: to conduct a deposition of Detective Michael Queen; to
23 conduct a deposition of Detective Brian Redsull; to conduct a deposition of "Queen and
24 Redsull's boss who was at the meeting where Hiller signed the agreement;" to request
25 production of Queen's text messages with Janet Hiller and Jean Hiller; to request
26 production of Queen's phone records; to request production of "[l]aw enforcement records
27 indicating Hiller worked for Queen;" and to request production of "prosecution files in
28 cases related to Alann Gray, Michelle Sparks, and Zachariah Luz, indicating Hiller was

1 the source of any information.” See Motion for Discovery (ECF No. 30), p. 6. Hiller does
2 not, however, submit as exhibits the discovery documents—presumably, subpoenas—
3 that she wishes to serve. The Court will not grant leave to conduct discovery without first
4 viewing the proposed subpoenas or other discovery documents.

5 Moreover, Hiller’s request for leave to conduct discovery regarding the merits of
6 her claims is premature. Hiller does not show good cause for the discovery she requests
7 relative to the merits of her claims, because it is yet to be seen whether Hiller’s claims are
8 procedurally viable, such that discovery is warranted. The scheduling order in this case
9 states:

10 Discovery. If Petitioner wishes to move for leave to conduct
11 discovery, Petitioner shall file such motion concurrently with, but separately
12 from, the response to Respondents’ motion to dismiss or the reply to
13 Respondents’ answer. Any motion for leave to conduct discovery filed by
14 Petitioner before that time may be considered premature, and may be
15 denied, without prejudice, on that basis. Respondents shall file a response
16 to any such motion concurrently with, but separately from, their reply in
17 support of their motion to dismiss or their response to Petitioner’s reply.
18 Thereafter, Petitioner will have 20 days to file a reply in support of the motion
19 for leave to conduct discovery.

20 Order filed April 23, 2019 (ECF No. 11). This scheduling provision allows for the petitioner
21 to request discovery relative to a motion to dismiss if such discovery is necessary, and it
22 allows for the petitioner to request discovery relative to the merits of her claims after the
23 respondents have answered the claims. Here, Respondents have yet to file any
24 response—whether a motion to dismiss or answer—to Hiller’s amended petition, so it
25 remains to be seen whether the claims on which Hiller seeks to conduct discovery are
26 procedurally viable. In the interest of judicial economy, and the interest of conserving the
27 resources of the parties and the targets of the proposed discovery, the Court will not grant
28 leave to conduct this discovery, relative to the merits of Hiller’s claims, at this time. If Hiller
believes she needs to conduct discovery in response to a motion to dismiss, she may file
a motion in conjunction with her response to such motion; if she believes she needs to
conduct discovery relative to the merits of her claims, she may file a motion in conjunction

1 with her reply to Respondents' answer. See *id.* Hiller's current motion for leave to conduct
2 discovery will be denied without prejudice.

3 **IT IS THEREFORE ORDERED** that Petitioner's Motion to Seal (ECF No. 28) is
4 **GRANTED**. Petitioner is granted leave of court to file Exhibit No. 29 under seal. As that
5 exhibit has already been filed under seal (ECF No. 29), no further action is necessary in
6 this regard.

7 **IT IS FURTHER ORDERED** that Respondents' Motion for Enlargement of Time
8 (ECF No. 32) is **GRANTED**. Respondents' response to Petitioner's motion for leave to
9 conduct discovery (ECF No. 33) will be treated as timely filed.

10 **IT IS FURTHER ORDERED** that Petitioner's Motion for Discovery (ECF No. 30) is
11 **DENIED**, without prejudice.

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13 DATED THIS 7th day of April, 2020.

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17 RICHARD F. BOULWARE, II,
18 UNITED STATES DISTRICT JUDGE
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